IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

CRL.A.No. 9 of 2001(A)

STC.67/1997 of CHIEF JUDICIAL MAGISTRATE, KASARAGOD
.....

APPELLANT:

M/S.MAHA RASHTRA APEX CORPORATION LTD.,
KASARAGODE.

BY ADV. SRI.S.R.DAYANANDA PRABHU

RESPONDENTS:
---

1. MOTAYIL HAMZA,
SON OF IBRAHIM,
RESIDING AT KOLAKERI,
KOLAKERI POST,
MADIKERI-571 214,
KARNATAKA STATE.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA
PUBLIC PROSECUTOR, SRI C.K.SURESH

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON 25/09/2007 DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.9 of 2001 (A)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Dated this the 16th day of July, 2007

J U D G M E N T

The appellant is the complainant in S.T.C.No.67/1997 in the file of the Chief Judicial Magistrate, Kasaragod, with respect to the offence under Section 138 of the Negotiable Instruments Act in which the accused stands acquitted. The complainants case is that the accused was the guarantor towards the hire purchase transaction to K.P Ahammed, which was financed by the complainant and a sum of Rs.89,000/- fell due and towards the same the accused issued the impugned cheque, which when presented got dishonoured for want of funds in the account of the accused. The lawyer notice sent was not replied to nor was the amount paid. The evidence adduced in the matter consisted of the testimony of PW.1 and Exts.P1 to P7. DW1 the accused himself has testified.

2. The trial court acquitted the accused on the ground that the prosecution had failed to establish the debtor creditor relationship in between the complainant and Mr.K.P.Ahammed, as the

transaction is a hire purchase agreement. And further the fact that the accused was only a guarantor and, hence, as per the dictum laid down in **Sreenivasa Vs. State of Kerala [1999 (3) KLT 459]**, the issuance of cheque as security cannot be termed as one for discharge of debt or liability.

3. It is pointed out that the above decision cited by the court below is not good law in the light of the decision of the Apex Court in **I.C.D.S Ltd vs. Beena Shabeer [2002 (3) KLT 218]**; and, rightly so.

4. PW.1, the official of the company who was examined at the instance of the complainant has testified when cross-examined that the company has not seized the vehicle and that the vehicle was seized by the forest department and sold. In the circumstances the finding of the court below that in the instant case there is no debtor creditor relationship in between the company and K.P Ahammed, has no merits. In the evidence of DW.1, the accused has admitted his signature in Ext.P1, that is, the hire purchase agreement. He

has admitted his signature in Ext.P2, the impugned cheque. In the circumstances, I find that the evidence of DW.1 is not helpful to support his contention of denial of liability.

In the circumstances, I find that the decision of the court below is liable to be set aside. I find that the complainant has proved beyond doubt that the accused is guilty of the offence under Section 138 of the Negotiable Instruments Act. Accused/respondent is convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to imprisonment till the rising of the court and to pay a compensation of Rs.89000/- to the complainant and in default to undergo simple imprisonment for three months. Six months time is granted to the accused/first respondent to pay the compensation amount. He shall appear before the court below on 24/01/2008 to receive the sentence.

The criminal appeal is disposed of as above.

K.R.UDAYABHANU,
Judge

ms

K.R.UDAYABHANU, J.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

Crl.A.No.9 of 2001 (A)

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

J U D G M E N T

16th July, 2007